

Message Text

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ACTION ARA-10

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INFO AMEMBASSY BRASILIA

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TAGS: ELAB, BR

SUBJ: PRESIDENTIAL DECREE LAW ON WORKERS VACATIONS STIRS SOME
UNEXPECTED CRITICISM FROM SAO PAULO LABOR LEADERS

REF: BRASILIA 2970

1. SUMMARY: PRESIENT GEISEL HS USED HIS AI-5 POWERS TO DECREE
CHANGES OF CONSOLIDATED LABOR CODE PROVISIONS DELAING
WITH WORKERS' VACATIONS. THE NEW LAW'S MOST SALIENT FEATURE
EXTENDS THE MAXIMUM POTENTIAL NUMBER OF PAID VACATION DAYS FOR
WORKERS TO 30 PER YEAR. OTHER SIGNIFICANT PROVISIONS PERMIT AN
EMPLOYER TO INCREASE DEDUCTIONS OF WORKERS' VACATION PRIVILEGES
FOR ABSENTEEISM, TO SEND EMPLOYEES ON COLLECTIVE VACATIONS AT THE
TIME OF HIS CHOOSING, AND TO ALLOW AN EMPLOYEE
TO WORK PART OF HIS VACATION FOR EXTRA PAY.

2. PERHAPS CONTRARY TO EXPECTATIONS OF THE REVOLUTIONARY GOVERNMENT,
THE PRESIDENT'S ACTION HAS NOT EVOKED THE UNANIMOUS APPROVAL OF SAO
PAULO LABOR LEADERS. WHILE THE LENGTHENING OF VACATIONS HAS BEEN,
IN GENERAL, FAVORABLY RECEIVED, THE INCLUSION OF THE OTHER
PROVISIONS WHICH SEEM LIKELY TO UNDERMINE SUBSTANTIALLY THIS
POTENTIAL GAIN FOR WORKERS HAS DRAWN SOME STRONG CRITISM FROM
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THE AREA'S MORE AUTHENTIC LABOR SPOKESMEN, AS HAS THE PRESIDENT'S
GAILURE TO CONSULT THE LABOR MOVEMENT ON HIS "REFORM."
END SUMMARY.

3. THE PRESIDENTIAL DECREE ON WORKERS' VACATIONS CONTAINS FOUR MAJOR
MODIFICATIONS OF THE EXISTING LAW. ITS MOST PROMINENT FEATURE
EXTENDS TO A TOTAL OF 30 DAYS PER YEAR THE

MAXIMUM POTENTIAL PAID VACATION TIME AVAILABLE TO ALL BRAZILIAN SALARIED WORKERS. UNDER THE PREVIOUS LAW, WORKERS RECEIVED A MAXIMUM OF 20 WORKING DAYS OF VACATION WHICH IN EFFECT MEANT THAT THOSE WORKING FIVE DAY WEEKS WERE AUTHORIZED 28 TOTAL DAYS OFF AND THOSE WORKING SIX DAY WEEKS RECEIVED 23. A SECOND PROVISION ALLOWS EMPLOYEES, IF THEY CHOOSE, TO WORK FOR THEIR REGULAR EMPLOYERS DURING 10 DAYS OF THEIR PAID VACATION IN WHICH CASE THEY DRAW AN EXTRA 10 DAYS' SALARY. THE OLD LAW FLATLY PROHIBITED AN EMPLOYEE FROM WORKING DURING HIS VACATION EVEN FOR EXTRA PAY. THE NEW LAW ALSO ALLOWS EMPLOYERS DRASTICALLY TO INCREASE DOCKING OF VACATION TIME OF THOSE WORKERS UNJUSTIFIABLY ABSENT FROM THEIR JOBS. FORMERLY, FOR EXAMPLE, THOSE WORKING AT LEAST 250 DAYS DURING THE YEAR WERE ENTITLED TO A MINIMUM OF 15 DAYS OF VACATION NO MATTER HOW MANY OTHER DAYS THEY WERE ABSENT. THE NEW LAW PROVIDES FOR A SHARPLY SCALED REDUCTION OF VACATION RIGHTS CULMINATING IN THE COMPLETE FORFEIT OF VACATION FOR A WORKER WHO IS ABSENT WITHOUT CAUSE FOR MORE THAN 32 DAYS IN A YEAR, NO MATTER HOW MANY DAYS HE WORKS. FINALLY, THE LAW GRANTS AN EMPLOYER THE RIGHT TO DECREE COLLECTIVE VACATIONS FOR HIS EMPLOYEES WHENEVER HE WISHES WITH ONLY 15 DAYS ADVANCE NOTICE.

4. THE NEW DECREE LAW HAS NOT MET WITH THE DEGREE OF APPROVAL FROM SAO PAULO LABOR LEADERS THAT ITS AUTHORS APPARENTLY WOULD HAVE WISHED. ALTHOUGH SOME OF THE MORE UNABASHED PRO-GOVERNMENT LABOR HACKS (PELEGOS) HAVE ALREADY APPLAUDED THE PRESIDENT'S INITIATIVE, A NUMBER OF THE CITY'S MORE AUTHENTIC AND THOUGHTFUL LEADERS, MOSTLY REPRESENTING METAL, CHEMICAL AND BANKWORKERS UNIONS, HAVE BEEN ABLE TO SEE PAST THE ATTRACTIVE ALLURE OF THE 30 DAYS PAID VACATION IN WHICH THE LIMITED OFFICIAL USE

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LAW WAS CLOTHED TO ITS MORE NEGATIVE FEATURES. THEY HAVE FOUND MOST DISTURBING THE NEW LAW'S SHARPLY ESCALATED PUNITIVE MEASURES AGAINST ABSENTEEISM. A SPOKESMAN FOR THE SAO PAULO METALWORKERS FEDERATION TOLD THE REPORTING OFFICER THAT THE RELATIVELY HIGH ABSENTEE RATE OF THE BRAZILIAN WORKER PRACTICALLY INSURES THAT MOST WILL NEVER ENJOY ANYTHING NEAR THE MUCH HERALDED 30 DAYS PAID VACATIONS GRANTED UNDER THE NEW LAW.

5. LABOR LEADERS ALSO FEAR THAT THE PROVISION PERMITTING AN EMPLOYEE TO WORK 10 DAYS OF HIS VACATION, WHICH THE GOVERNMENT VIEWS AS A MEANS FOR A WORKER TO INCREASE HIS INCOME, WILL BE USED AGAINST HIM IN PRACTICE. THEY EXPLAIN THAT THE INHERENTLY UNEQUAL AND COERCIVE NATURE OF LABOR/MANAGEMENT RELATIONS HERE WILL RENDER ACADEMIC THE WORKERS' LEGAL RIGHT TO TURN DOWN HIS EMPLOYER'S REQUEST TO WORK DURING HIS PERIOD. WORKERS REFUSING TO WORK DURING THEIR VACATION WILL DO SO ON PAIN OF DISMISSAL. IN ADDITION, THEY POINT OUT THAT THIS ARTICLE UNDERMINES THE BASIC CONCEPT OF VACATION, WHICH IS LEISURE. IF THE GOVERNMENT WISHES TO RAISE THE WORKER'S INCOME, THEY ARGUE,

IT SHOULD RAISE WAGES.

6. SOME LABOR LEADERS ARE ALSO TROUBLED BY THE LAW'S SANCIFICATION OF A FAIRLY COMMON EMPLOYER PRACTICE OF DECREERING COLLECTIVE VACATIONS FOR THEIR EMPLOYEES WITH MINIMAL ADVANCE NOTICE. THIS ISSUE HAS TAKEN ON SOME HEAT OF LATE SINCE THE MAJOR AUTO MANUFACTURERS HERE HAVE BEGUN SHUTTING DOWN THEIR PLANTS FOR A WEEK OR TWO AT A TIME IN ORDER TO REDUCE THEIR BACKLOG OF CARS. LABOR LEADERS DEPLORE THIS PRACTICE AND ARGUE THAT AS THINGS NOW STAND, WORKERS WILL BE FOREVER DENIED THE RIGHT TO TAKE VACATIONS AT A TIME OF THEIR CHOOSING. MOREOVER, THE SHORT 15 DAY ADVANCE NOTICE REQUIRED WILL MAKE LONG RANGE VACATION PLANS IMPOSSIBLE, PARTICULARLY IN THE AUTO INDUSTRY.

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7. PERHAPS THE SAO PAULO LABOR LEADERS' MAJOR OBJECTION TO THE DECREE LAW IS SIMPLY THAT THEY WERE TOTALLY IGNORED IN ITS PREPARATION. THEY POINT OUT THAT BEFORE IT WAS RECESSED, CONGRESS HAD BEEN CONSIDERING AMENDMENTS TO A GOVERNMENT BACKED VACATION REFORM BILL, PROPOSED BY FRIENDS OF LABOR SUCH AS MDB FEDERAL DEPUTY RUY BRITO, WHICH WOULD HAVE ELIMINATED MOST OF THE NEW LAW'S MORE ONEROUS FEATURES WHILE PRESERVING THE 30-DAY PROVISION. SAO PAULO METALWORKERS FEDERATION PRESIDENT ARGEU EGYDIO DOS SANTOS WAS ESPECIALLY DISGUSTED BECAUSE HE HAD GONE PERSONALLY TO BRASILIA EARLIER THIS WEEK TO DELIVER TO TH LABOR MINISTER HIS ORGANIZATION'S CAREFULLY PREPARED SUGGESTED CHANGES ON THE VACATION LAW, ONLY TO BE INFORMED THAT PRESIDENT GEISEL HAD ALREADY DECIDED TO ACT ON HIS OWN.

8. COMMENT: NONETHELESS, IN PART BECAUSE THE NEW LAW CONTAINS

SOME POSITIVE FEATURES AND IN PART BECAUSE IT IS SO COMPLICATED,
THERE DOES NOT SEEM TO BE ANY GENERAL SENSE OF OUTRAGE THAT COULD BE
EXACERBATED BY WIDER OBJECTIONS TO THE POLITICAL REFORMS DECREED
BY THE PRESIDENT. HOWEVER, IF THE GOVERNMENT THOUGHT THAT THE
VACATION LAW DESCRIBED BY THE LABOR MINISTER AS A "PRESENT TO
TH WORKERS" WOULD WIN THE UNQUALIFIED APPROVAL OF SAO PAULO'S
MORE OUTSPOKEN LABOR LEADERS AND SOMEHOW DEFLECT THEIR CRITICISM
OF THE PRESIDENT'S CONSTITUTIONAL AMENDMENTS, IT WAS SERIOUSLY
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MISTAKEN.

9. EMBASSY CONCURS.
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